

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

MICHELLE WEEKS and MARIA
SANDOVAL, individually and on
behalf of all others similarly situated,

Plaintiff,
vs.

KELLOGG COMPANY, a Delaware
corporation; KELLOGG USA, INC., a
Michigan corporation; KELLOGG
SALES COMPANY, a Delaware
corporation, and DOES 1 through 100,
inclusive,

Defendants.

No. CV 09-08102 (MMM) (RZx)

Hon. Margaret M. Morrow

**ORDER GRANTING
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

The parties to this litigation have entered into a Stipulation of Settlement ("Stipulation") dated January 19, 2011, which if approved, would resolve this putative class action. Plaintiffs have filed a motion for preliminary approval of the Stipulation, which Defendant Kellogg supports.

The Court has read and considered the Stipulation and all exhibits thereto, including the proposed class notice and claim form, and finds there is sufficient basis for: (1) granting preliminary approval of the Stipulation of Settlement; (2) certifying a class for settlement purposes; (3) appointing Plaintiffs Michelle Weeks, Maria

1 Sandoval and Katie Dintelman as Class Representatives and their
2 counsel as Class Counsel; (4) granting leave to file a Consolidated
3 Fourth Amended Complaint for the purpose of adding Katie
4 Dintelman as a class representative and bringing suit on behalf of a
5 nationwide Class; (5) directing that Notice be disseminated to the
6 Class; and (6) setting a hearing at which the Court will consider
7 whether to grant final approval of the Settlement.

8 The Court now GRANTS the motion for preliminary approval
9 and makes the following findings and orders:

10 1. The Court preliminary certifies, for settlement purposes
11 only, the following settlement class (the "Class") pursuant to Rule
12 23(b)(3) of the Federal Rules of Civil Procedure:

13 All persons or entities in the United States who purchased the Product
14 between June 1, 2009 and March 1, 2009. Excluded from the Class
15 are Kellogg's employees, officers, directors, agents and
representatives and those who purchased the Product for the purpose
of resale.

16 For purposes of the Stipulation, "Product" means the Rice Krispies®
17 and Cocoa Krispies® branded cereals that are the subject of the
18 Litigation.

19 2. The Court approves Plaintiffs Michelle Weeks, Maria
20 Sandoval and Katie Dintelman as Class Representatives.

21 3. The Court appoints the following law firms to serve as
22 Class Counsel: Milstein Adelman, LLP; Whatley Drake & Kallas, LLC;
23 Law Offices of Howard Weil Rubinstein; Kirtland & Packard, LLP;
24 Becker, Paulson, Hoerner & Thompson, P.C.; and, Freed & Weiss,
25 LLC.

26 4. The Court grants plaintiffs leave to file a Consolidated
27 Fourth Amended Complaint for the purpose of adding Katie
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1 Dintelman as a class representative and alleging a nationwide Class.
2 Plaintiffs must file the amended complaint within ten (10) days of
3 the date of entry of this Order.

4 5. The Court finds, for purposes of settlement only, that the
5 settlement Class meets the requirements of Rule 23 of the Federal
6 Rules of Civil Procedure. Joinder of all Class Members in a single
7 proceeding would be impracticable, if not impossible, because of
8 their numbers and dispersion. Common issues exist among Class
9 Members and predominate over questions affecting individual Class
10 Members only; in particular, each Class Member's claims depend on
11 whether the Immunity Claims made by Kellogg on the packaging,
12 labeling and advertising of Cocoa Krispies and Rice Krispies were
13 true or false. The named plaintiffs' claims are typical of, indeed
14 identical to, those of the Class, as the named plaintiffs were
15 exposed to the Immunity Claims and purchased the Product in
16 reliance on those claims. The named plaintiffs and their counsel will
17 fairly and adequately protect the interests of the Class as the named
18 plaintiffs have no interests antagonistic to the Class, and have
19 retained counsel who are experienced and competent to prosecute
20 this matter on behalf of the Class. Finally, a class settlement is
21 superior to other methods available for a fair resolution of the
22 controversy.

23 6. The Court preliminary approves the proposed Stipulation
24 of Settlement, finding that its terms appear sufficient and fair,
25 reasonable and adequate to warrant dissemination of notice of the
26 proposed settlement to the Class. The Stipulation contains no
27 obvious deficiencies and the parties have entered into the
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1 Stipulation in good faith, following arms-length negotiation between
2 their respective counsel.

3 7. The Court approves the form and procedure for
4 disseminating notice of the proposed settlement to the Class as set
5 forth in the Stipulation. It finds that the notice the parties propose
6 to give constitutes the best notice practicable under the
7 circumstances, and constitutes valid and sufficient notice to the
8 Class in full compliance with the requirements of applicable law,
9 including the Due Process Clause of the United States Constitution.

10 8. Within 30 days after the date of entry of this Order,
11 Kellogg shall cause the Notice to be disseminated in substantially
12 the form attached hereto as Exhibit 1. It shall also disseminate the
13 Claim Form in substantially the form attached hereto as Exhibit 2,
14 and cause it to appear in those media and Internet outlets identified
15 in the media plan agreed to by the Parties.

16 9. As set forth in the Stipulation, Kellogg shall bear all costs
17 and expenses associated in with providing notice to the Class,
18 complying with 28 U.S.C. § 1715(b) and administering the proposed
19 settlement.

20 10. A hearing on final approval of the Settlement Agreement,
21 an award of fees and expenses to Class Counsel, and incentive
22 payments to the named plaintiffs (the "Fairness Hearing") shall be
23 held at 10 a.m. on Monday, August 29, 2011, before the
24 undersigned in Courtroom 780 of the United States District Court for
25 Central District of California, 255 East Temple Street, Los Angeles,
26 CA 90012. At the Fairness Hearing, the Court will consider: (a)
27 whether the Settlement should be approved as fair, reasonable, and
28 adequate for the class; (b) whether a judgment granting approval of

1 the Settlement and dismissing the lawsuit with prejudice should be
2 entered; and (c) whether Class Counsel's application for attorneys'
3 fees and expenses and incentive awards for the named plaintiffs
4 should be granted.

5 11. Class Counsel shall file an application for attorneys' fees
6 and costs and incentive awards to the named plaintiffs ("Fee
7 Application") no later than July 18, 2011.

8 12. Counsel for the respective parties shall file memoranda,
9 declarations, and other statements and/or materials in support of
10 the request for final approval of the parties' Settlement no later
11 than July 25, 2011.

12 13. No later than fourteen days prior to the Fairness Hearing,
13 Kellogg, through its claims administrator, shall file an affidavit and
14 serve a copy on Class Counsel, attesting that notice was
15 disseminated as required by the terms of the Stipulation of
16 Settlement or as ordered by the Court.

17 14. Any member of the Class who intends to object or
18 comment on the request for final approval of the Stipulation of
19 Settlement or on the Fee Application must, on or before July 25
20 2011 file his or her objection or comment with the Court, and
21 provide copies of the objection or comment to: (1) the Court; and
22 (2) Class Counsel. To state a valid objection to the Settlement, a
23 Class Member must provide the following information: (a) the full
24 name, address and telephone number of the Settlement Class
25 Member; (b) a written statement of all grounds for the objection
26 accompanied by legal support for the objection; (c) a statement as
27 to whether the Settlement Class Member intends to appear at the
28 Final Approval Hearing; (d) proof of membership in the Class; and,

(e) the signature of the Settlement Class Member or her/his counsel. Any objection to the requested attorneys' fees shall include the information outlined in subsections (a) through (e) above. In addition, any Class Member objecting to the Settlement shall provide a detailed list of any other objections submitted by the objector, or the objector's counsel, to any class actions pending in any court in the United States, state or federal, in the previous five (5) years. If the Class Member or his/her/its counsel has not objected to any other class action settlement in the previous five (5) years, he/she/it shall affirmatively so state in the objection that is file.

15. Any objecting Class Member may appear, in person or by counsel, at the Final Approval Hearing to show cause why the proposed Settlement should not be approved as fair, adequate and reasonable, or to object to any application for attorneys' fees, incentive awards, and reimbursement of litigation costs and expenses, but only if the class member has first filed written objections to the proposed settlement by the deadline set forth in this order. The objecting Class Member must file and serve on all counsel designated in the Class Notice, a notice of intention to appear at the Fairness Hearing ("Notice of Intention to Appear") by the Objection Deadline. The Notice of Intention to Appear must include copies of any papers, exhibits, or other evidence that the objecting Class Member (or his/her/its counsel) will present to the Court in connection with the Fairness Hearing. Any Class Member who does not provide a Notice of Intention to Appear by the deadline set forth in this order, and who does not file an objection that complies with the requirements set forth in this order and the

1 Class Notice, will be deemed to have waived any objections to the
2 Settlement and will be barred from speaking or otherwise
3 presenting views at the Final Approval Hearing.

4 16. Any Class Member shall have the right to opt out of the
5 Class and the Settlement by sending a written request for exclusion
6 from the Class to the addresses listed in the Notices, postmarked or
7 delivered no later than thirty (30) days before the Final Approval
8 Hearing. To be effective, a Request for Exclusion shall: (i) state the
9 Class Member's full name and current address; (ii) specifically and
10 clearly state the Class Member's desire to be excluded from the
11 Settlement Class; and (iii) be signed by the Class Member or
12 his/her/its counsel. Any Class Member who does not submit a timely
13 and valid request for exclusion shall be subject to and bound by the
14 Stipulation and every order or judgment entered concerning the
15 Stipulation.


16 17. If a Class Member files an objection to the settlement,
17 Class Counsel or Kellogg's attorney may depose the objector
18 consistent with the Federal Rules of Civil Procedure at an agreed-
19 upon location, and seek to have the objector produce documentary
20 evidence or other tangible things relevant to the objection. An
21 objector's failure to make him or herself available for deposition or
22 to comply with expedited discovery requests may result in the Court
23 striking the objector's objection and otherwise affect that person's
24 substantive rights. The Court reserves the right to tax the costs of
25 such discovery to the objector or the objector's counsel should it
26 determine that the objection was frivolous or was made for an
27 improper purpose.
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1 18. The procedures and requirements for filing objections in
2 connection with the Final Approval Hearing are intended to ensure
3 the efficient administration of justice and the orderly presentation of
4 any Class Member's objection to the Settlement Agreement so as to
5 protect the due process rights of all Class Members.

6 19. No later than August 15, 2011, the Parties shall file any
7 reply in support of final approval of the Stipulation, and Class
8 Counsel shall file any reply in support of the Fee Application.

9 20. The Court reserves the right to adjust the date of the
10 Fairness Hearing and related deadlines. If dates are altered, the
11 revised hearing date and/or deadlines shall be posted on the
12 settlement website referenced in the Class Notice. The parties will
13 not be required to re-send or re-publish Class Notice.

14
15 DATED: May 9, 2011



HON. MARGARET M. MORROW
UNITED STATES DISTRICT JUDGE